

CIVIL REVISION APPLICATION No 880 of 1983

Hon'ble MR.JUSTICE P.B.MAJMUDAR

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made the

5. Whether it is to be circulated to the Civil Judge? : NO

FATMABAI ABUBAKAR

MR SURESH M SHAH for Respondent No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10

### ORAL JUDGEMENT

#. The petitioner is the defendant against whom Regular Civil Suit oNo.560 of 1974 has been filed by the

respondents-plaintiffs in the court of the learned Civil Judge(SD) at Bhavnagar.

#. The case of the plaintiffs is that the plaintiffs are the owners of residential house situated in Vadva Padar Devki area in the city of Bhavnagar. The defendant is a tenant of one room at a monthly rent of Rs. 25/- p.m. According to the plaintiffs the defendants were irregular in making the payment of rent and they are in arrears from 1.11.1973 to 30.6.1974. The plaintiffs therefore, issued a notice under section 12(2) of the Bombay Rent Act demanding arrears of rent but the defendant did not comply with the same.

#. The defendant appeared in the suit and filed written statement at exh.11. He denied that he was negligent in payment of rent. Thus the defendant has resisted the suit of the plaintiffs.

#. The Trial Court framed various issues at exh.13. After recording the evidence and after hearing the arguments of both the sides the Trial Court came to the conclusion that the defendant was in arrears of rent. The Trial Court decreed the suit and the tenant was directed to hand over possession of the suit premises.

#. The decree of the Trial Court was challenged by the opponent by filing Regular Civil Appeal No. 99 of 1978 in the Court of the learned District Judge, Bhavnagar. The learned Appellate Judge found that the petitioner defendant has not deposited the rent regularly during the pendency of the proceedings and accordingly the Appellate Court came to the conclusion that the tenant was not entitled to protection under section 13(3)(b) of the Bombay Rent Act and accordingly the appeal was dismissed. At the time of hearing of this Revision Application Mr. P.V.Hathi the learned advocate for the petitioner contended that the tenant was regular in payment of rent and therefore, he should have been protected under section 12(3)(b) of the Bombay Rent Act.

#. In view of the aforesaid facts and circumstances it is necessary to examine the observations of the Appellate Court in its judgment. The question about non payment of the rent has been examined by the Appellate Court in para 14 of its judgment. Over and above, a table has been given by the learned Appellate Judge at page 12 of his judgment and as per the same the tenant had not deposited the rent in the court from September 1978 to June 1979. Looking to the table given at page 12 of the judgment of the Appellate Court, it is clear that the tenant was not

regular in payment of the rent. In that view of the matter relying upon the judgment of the judgment reported in 19 GLR 502 in the case of Ganpat Ladhi vs. Sashikant Vishnuu Shinde, the Appellate Court found that since the tenant was not regular in payment of rent, and therefore, the appeal was dismissed by him. Looking to the facts and circumstances of the case, I do not see any infirmity in the order passed by the Appellate Court.

#. During the pendency of the trial as well as during the pendency of the appeal the tenant has to deposit the rent every month in order to get protection under section 12(3)(b) of the Bombay Rent Act. In that view of the matter the Revision Application is required to be dismissed as there is no substance in the Revision Application. Accordingly the Revision Application is dismissed. Rule is discharged. Interim relief granted earlier stands vacated. No order as to costs.

#. At this stage Mr. Hathi learned advocate for the petitioner requests that he may be granted some time to vacate the suit premises. In the facts and circumstances I direct that the decree for possession may not be executed till 31.3.2001 on condition that the petitioner shall file a usual undertaking before this court within 8 weeks from today. In the said undertaking the petitioner shall mention that he is in exclusive possession of the suit premises and that he will not transfer or alienate the suit property to any one and without obstructing in any manner he will hand over the vacant and peaceful possession to the landlord on or before 31.3.2001. The petitioner shall continue to pay mesne profit regularly during the aforesaid period. If the petitioner fails to file undertaking within 8 weeks from today or if the petitioner commits any breach of the said undertaking it will be open for the landlord to execute the decree for possession forthwith.

(P.B.Majmudar.J)

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